

APRAK REALTY (VOHNOUTKA)

DEPARTMENT OF THE ARMY

RIGHT-OF-ENTRY FOR CONSTRUCTION



SDMS DocID

294227

NEW BEDFORD HARBOR SUPERFUND SITE

(Project, Installation or Activity)

TRACTS 101E, 101E-1 + 101E

(Tract Number or Other Property Identification)

The undersigned, hereinafter called the "Owner," in consideration of the total compensation to be paid by the UNITED STATES OF AMERICA, hereinafter called the "Government," for all land or easement rights hereinafter described, to be determined by subsequent agreement between the Owner and the Government, or by judicial proceedings, hereby grants to the Government, a permit or right-of-entry upon the following terms and conditions:

1. The Owner hereby grants to the Government an irrevocable right to enter upon the lands hereinafter described at any time within a period of TWELVE (12) months from the date of this instrument, ~~in order to erect buildings or any other type of improvements and to perform construction work of any nature.~~ *for the purpose of*

2. This permit includes the right of ingress and egress on other lands of the Owner not described below, provided that such ingress and egress is necessary and not otherwise conveniently available to the Government.

3. All tools, equipment, buildings, improvements, and other property taken upon or placed upon the land by the Government shall remain the property of the Government and may be removed by the Government at any time within a reasonable period after the expiration of this permit or right-of-entry.

4. The Government shall have the right to patrol and police the lands hereinafter described during the period of this permit or right-of-entry.

5. If aircraft flights over said lands, or entry upon the land by means of helicopter or other type aircraft, are necessary, the Government shall inform the Owner, in advance, of each such flight or entry.

6. It is understood and agreed that if the Government does not acquire title or other necessary interest in said land prior to the expiration of this permit or right-of-entry, or any renewal thereof, the Government agrees to be responsible for any damage arising from the activity of the Government, its employees and/or contractors on said lands, in the exercise of rights under this permit or right-of-entry, and shall repair such damages, or, in lieu thereof and at the option of the Government, shall make an appropriate settlement with the Owner.

The land affected by this permit or right-of-entry is located in the County of BRISTOL State of MASSACHUSETTS, and is described as follows:

SEE EXHIBIT A + EXHIBITS B1 + B2

WITNESS MY HAND AND SEAL this 23rd day of OCTOBER, 2000

WITNESS:

Richard Vohnoutka (SEAL)
FOR APRAK REALTY TRUST (SEAL)

1 OE No. _____
Prop. Id _____

CERTIFICATE OF AUTHORITY

I, RICHARD P. VONNOOTKA, certify that I am the Trustee
of the APRAK REALTY TRUST, the entity which executed the foregoing instrument
with the United States of America; and that RICHARD VONNOOTKA, who signed the
foregoing instrument on behalf of the grantee, was then Trustee of
said APRAK REALTY TRUST. I further certify that the said officer was acting within the
scope of powers delegated to this officer by the governing body of the grantee in executing said
instrument.

IN WITNESS WHEREOF, I have hereunto set my hand, and the seal of the

APRAK REALTY TRUST this 23rd day of October, 2000By: Richard P. Vonnootka



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
EPA NEW ENGLAND**

Date: January 4, 2001
Subject: Karpa Property
From: Cynthia E. Catri
Senior Enforcement Counsel
To: File

Meeting October 31, 2000 at Sawyer Street trailer with Greg Jonsson, Esq., Richard Vohnoutka, Cynthia Catri (EPA), Jim Brown (EPA), Edward Fallon (COE), Quentin Walsh (COE), Maurice Beaudoin (COE), George Leontire, Esq. (City of New Bedford), Felix Petraca (abutter) and his representative and representatives of Buff-Tree (potential developer). EPA and COE described the remediation and its impact on abutting properties. Buff-Tree was informed that remediation plans could be reasonably modified to accommodate future development of area and that EPA's required property interests were minimized as much as possible anticipating future development of area.

NEGOTIATOR'S REPORT PART I		1. PROJECT NAME AND LOCATION New Bedford Harbor CDF'C'	2. TRACT NUMBER 101 & 101E
THRU:	TO:	FROM: Edward J. Fallon & Quentin Walsh	
3. NAME AND ADDRESS OF OWNERS: APRAK Realty Trust (Richard Vohnoutka) Sawyer Street, New Bedford, MA Plat 93 Lot 263			
3. AREA Permanent Easements 51,034 ± S.F. Temporary Easement 3,402 ± S.F.	4. APPROVED APPRAISED VALUE \$ 31,570.00 (.77 Acres) \$ 9,430.00 (.23 Acres) \$ 930.00	6: GOVERNMENT'S INITIAL OFFER \$ 41,930.00	

POC: Attorney Greg Jonsson (508) 636-6991

September 12, 2000

Quentin Mailed offers to owners.

September 14, 2000

Quentin Received return receipts from mailing.

September 28, 2000

Telephoned Attorney Greg Jonsson and left message to return my call.

September 29, 2000

Second telephone call to Attorney Greg Jonsson and left message to return my call.

October 6, 2000

Third telephone call to Attorney Greg Jonsson and left message to return my call otherwise we would be forced to begin condemnation proceedings due to non-responsiveness. Secretary said he would call back around 12:30PM. No call received by close of business.

October 23, 2000

Cindy Catri, Quentin and I met with Attorney Greg Jonsson. Mr. Vohnoutka was not present and called while the meeting was in progress to say that he was unable to attend but that Mr. Jonsson could act in his behalf. Mr. Jonsson said that his client was insulted with the government's offer in light of the proposed offer by a potential developer of \$450,000. I informed Mr. Jonsson that if the proposed offer by the developer was in fact a bonafide purchase and sales or offer to purchase we might be able to consider it as a basis for negotiations but without seeing the entire document we could not make any commitments. Otherwise, Mr. Vohnoutka's only other avenue was to contract for his own appraisal, so long as it confirmed with the governments guidelines, and he could then submit it for review by the government and if it was found to have more validity and was approved could form the basis for a new offer. The meeting concluded with us continuing our discussions after we have a chance to meet with the proposed developers scheduled for October 31, 2000.

October 31, 2000

We meet with the proposed developer, Mr. Vohnoutka, and City of New Bedford at the office trailer on Sawyer Street. An overview of the project and effects of the real estate were given by EPA and COE. We explained to the proposed contractor that we were willing and able to modify our proposed design plans to accommodate their proposed plans so that any impact on their project would/could be minimized. We further explained that the real estate acquisitions were kept to a minimum to allow for

November 20, 2000

Quentin received a fax from Attorney Jonsson (dated Sat Nov. 18) asking why we have not responded to his clients counter offer of \$301,500.00 dated Nov. 10, 2000. To date we have not received any offer and I called the Attorney and asked for a copy. Jonsson stated that the counter offer was based on the difference between \$450,000 for the original offer from the proposed developer and a recent new offer of \$148,500. Jonsson said that the new offer was made after our meeting with the developer and was based on our plans for construction of the CDF. I told him that we and the developer must sit down to discuss their plans, which we have not yet seen, to reassure them that our plans could be modified to assist their plans. He assured me that he would contact the developer and plan it meet ASAP. He further stated that, no, there was no appraisal or any other documentation to support any of the value estimates discussed and that he was going to recommend to Mr. Vohnoutka that he sign a new ROE and to go forward with his own appraisal.

November 28, 2000

In again faxed a new copy of right-of-entry to Greg Jonsson for Mr. Vohnoutka to sign.

November 29, 2000

Called Mr. Jonsson left message to return call re ROE. And meeting with developer.

December 6, 2000

Called Mr. Jonsson numerous times since the 29th and left messages, none returned. Today, Mr. Jonsson and I talked about setting up a meeting with the developer in the near future, tentative date of the 13th, he will call back latter to confirm. Also stated that GEVEAU & Co. of New Bedford would be doing an appraisal of his client's property.

December 11, 2000

Called Mr. Jonsson yet again, not in office and did not return my call.

Recommended to Cindy that we proceed with an access order and letter to the attorney indicating that if a response, in writing is not received within seven days that we proceed with filing condemnation proceedings due to non-responsiveness by Mr. Vohnoutka.

8. NEGOTIATOR'S RECOMMENDATION	8A. SIGNATURE, TITLE AND DATE
9. INTERIM RECOMMENDATION (<i>Proj. Mgr. Or Ch. Acq. Br.</i>)	9A. SIGNATURE, TITLE AND DATE
10. INTERIM RECOMMENDATION (<i>Ch. R.E. Div.</i>)	10A. SIGNATURE, TITLE AND DATE
11. CHECK APPLICABLE ITEMS COUNTER OFFER IN THE AMT. OF \$ _____ ACCEPTED ___ REJECTED BY ___ DIST ___ DIV. ___ OCE ___ OSA	
_____ SIGNATURE TITLE DATE	